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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/645,268 | 08/21/2003 | Stephen Alan Smith | 3177 P 425 | 7351 |
| 7590 | 08/18/2005 | | EXAMINER | |
| Paul J. Nykaza, Esq. Wallenstein Wagner & Rockey, Ltd. 53rd Floor 311 South Wacker Drive Chicago, IL 60606-6630 | | | HYLTON, ROBIN ANNETTE | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3727 | |
| DATE MAILED: 08/18/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,268

Applicant(s)

SMITH ET AL.

Examiner

Robin A. Hylton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11-17-03; 1-31-05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claim 6 is objected to because of the following informalities: the claim is missing punctuation at the end thereof. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 7,8,10, and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Claim 7 recites the limitation "the recessed portion of the cover" and "the recessed portion of the overlay" in lines 1-2. There is insufficient antecedent basis for these limitations in the claim.

Claim 8 recites the limitation "the recessed portion of the cover" and "the recessed portion of the overlay" in line 2. There is insufficient antecedent basis for this limitation in the claim.

The structure of claim 10 is not clearly set forth. Wherein the top wall is set forth as having an opening, it is unclear how the top wall has a recessed lip portion and how the recessed lip portion is structured.

The structure of the overlay is not clearly set forth in claim 17. How does the band "define" first and second apertures? In what portion(s) of the overlay are the apertures defined?

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (US 3,261,516).

Allen teaches a lid in the embodiment of figures 1-3 comprising a cover **10** having an annular top wall **13**, a side wall **11** depending from the annular top wall, the side wall having a mounting portion for removably connecting the lid to the container, and an opening in the annular top wall adapted to permit the passage of the flowable substance through the lid; and an overlay **12** having a top wall **26**, a side wall **30** depending from the top wall, the side wall having a mounting portion **33** for connecting the overlay to the cover, a projection **37** in the top wall, and at least one aperture **38**; wherein the overlay and the cover are cooperatively dimensioned such that the overlay and the cover are in rotational engagement wherein the overlay is movable between a first position and a second position, wherein the projection seals the opening in the first position and wherein the aperture is aligned with the opening in the second position.

It is unclear if at least a portion of the projection is received in the opening in the first position.

The embodiment of figures 4-6 clearly shows at least a portion of the projection of the cover is received in the opening of the overlay.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the projection of the overlay of a size such that at least a portion thereof is

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received in the opening of the cover. Doing so provides an engagement which does not allow any material within the associated container from being inadvertently carried along the top of the cover as the overlay is rotated.

Regarding claims 7 and 8, the recessed portions **18** and **44** are aligned during rotation of the overlay with respect to the cover.

To the degree claim 10 is understandable, figure 1 depicts the cover **10** as having a recessed lip portion wherein the top wall is recessed from the side wall.

5. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathews (GB 2,055,773) in view of McClean et al. (US 6,757,957).

Mathews teaches a lid comprising a cover **1** having a top wall **4** with a recessed central portion **6**, the top wall having an opening, the cover further having a side wall depending from the top wall, the side wall having a mounting portion for removably connecting the lid to the container; an overlay having a top wall with a recessed central portion **11**, the overlay further having a side wall depending from the top wall, the side wall having a mounting portion for rotatably connecting the overlay to the cover, the overlay further having at least one aperture **10**, wherein in a second position the aperture is aligned with the opening. Mathews does not teach the top wall having a projection depending therefrom, wherein the projection is received by the opening when the overlay is in the first position.

McClean teaches a lid comprising a cover having a top wall having an opening defined by wall **42**; an overlay **50** having a top wall having a projection **66** depending therefrom, the overlay further having a side wall **54a** depending from the top wall, the side wall having a mounting portion for rotatably connecting the overlay to the cover, the overlay further having at least one aperture **62**; and wherein the overlay is movable between a first position wherein the

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projection is received by the opening, and a second position wherein the aperture is aligned with the opening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a projection to the overlay of Mathews wherein at least a portion of the projection is received in the opening of the cover in a first position. Doing prevents any material within the associated container from being inadvertently carried along the top of the cover as the overlay is rotated between first and second positions.

6. In view of the rejections under 35 USC 112, 2nd paragraph, no art rejection can be made regarding claims 17-20 at this time.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

8. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

9. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

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I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

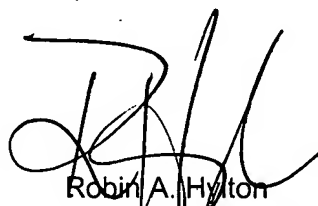
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
August 15, 2005



Robin A. Hylton
Primary Examiner
GAU 3727